

*In the Matter of Bobbie Hodges*

DOP Docket No. 2006-62

**(Merit System Board, decided December 7, 2005)**

Bobbie Hodges, a Senior Correction Officer with the Department of Corrections, represented by Robert C. Wolf, New Jersey State Corrections Association, Inc., FOP, Lodge 200, appeals the denial of sick leave injury (SLI) benefits.

The appellant sustained a work-related injury to her right knee and wrist on January 14, 2005, when she tripped on a loose plank in a crawl space she was inspecting. The appellant was treated by Dr. Virginia Gaskel, a State-authorized physician, for strains to her right knee and wrist. She was authorized out of work and received SLI benefits from January 15, 2005 through May 12, 2005.

In a note dated April 4, 2005, the appellant's physical therapist related that the appellant arrived 55 minutes late for her appointment, and she indicated that she could only attend therapy for 15 minutes, rather than a full hour. Due to her unwillingness to participate in therapy, the appellant was referred to another physical therapist, Richard L. Stoneking. Stoneking's office advised, in a letter dated May 2, 2005, that the appellant cancelled her April 26, 2005 appointment and failed to show for her May 2, 2005 appointment. In correspondence dated May 19, 2005, Stoneking's office advised that the appellant failed to show for therapy on May 10, 2005, cancelled her appointment on May 12, 2005, and refused treatment on May 13, 2005. In addition, she was 15 minutes late for her May 17, 2005 appointment, and she failed to show for her May 19, 2005 appointment. On June 30, 2005, the appointing authority was advised that the appellant had been discharged from Stoneking's care after canceling two more physical therapy appointments.

The appointing authority denied the appellant further SLI benefits after May 12, 2005, since she had been non-compliant with recommended medical treatment. In addition, the appointing authority indicated that it was rescinding its prior approval for SLI benefits from April 7, 2005 through May 4, 2005 and from May 6 through May 10, 2005.<sup>1</sup> For reasons unexplained in the record, the appointing authority also indicated that it was denying SLI benefits based on *N.J.A.C. 4A:6-1.6(e)6*, which provides that an injury or illness is not compensable when the appointing authority has established that the employee has been grossly negligent, including those injuries arising from impairment due to alcohol or drug abuse.

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<sup>1</sup> It is noted that the appellant attended an evaluation with her physical therapist on May 5, 2005 and was seen by Dr. Daniel Fletcher on May 12, 2005.

On appeal to the Merit System Board, the appellant argues that she was not grossly negligent. Rather, her injuries resulted from loose floor boards in the crawl space she was inspecting. She also asserts that the appointing authority inappropriately based its denial on its perception that certain prescription medications she was taking caused her fall. The appellant maintains that taking physician-prescribed medication cannot be deemed gross negligence.

In response, the appointing authority emphasizes that its denial of SLI benefits was based on the appellant's non-compliance with recommended medical treatment. It submits medical documentation demonstrating that the appellant missed numerous physical therapy appointments and refused to participate in several sessions for which she did appear.

Despite being provided the opportunity to supplement the record, the appellant has failed to submit any further arguments or documentation for the Board's review.

## CONCLUSION

According to uniform SLI regulations, in order to be compensable, an injury or illness resulting in disability must be work related and the burden of proof to establish entitlement to SLI benefits by a preponderance of the evidence rests with the appellant. See *N.J.A.C. 4A:6-1.6(c)* and *N.J.A.C. 4A:6-1.7(h)*. In the instant matter, there is ample documentation in the record evidencing that the appellant was non-compliant with the treatment plan recommended by her State-authorized doctor. The medical documentation demonstrates that the appellant was late for physical therapy sessions on two occasions, she cancelled physical therapy appointments on four occasions, and she simply failed to show for three scheduled sessions. Moreover, on April 4, 2005, she refused to fully participate in therapy, and on May 13, 2005, she arrived at her scheduled appointment time but refused treatment. The appellant does not dispute or provide any explanation for her non-compliance with her physical therapy program. Clearly, one of the conditions of continued receipt of SLI benefits is the pursuit of medical treatment for work-related injuries and compliance with recommended medical treatment to address those injuries. Accordingly, the appointing authority's denial of SLI benefits from April 7, 2005 through May 4, 2005, from May 6 through May 10, 2005 and after May 12, 2005 was proper and consistent with uniform SLI criteria, and the appellant has failed to meet her burden of proof in this matter.

It is noted that the denial of SLI benefits for the above dates requires the rescission of SLI benefits already received by the appellant for the period of April 7, 2005 through May 4, 2005 and from May 6, 2005 through May 10, 2005. Should the appointing authority decide to recover the SLI benefits paid to the appellant, the

appellant may petition the Board for a waiver of repayment of the salary overpayment pursuant to *N.J.A.C.* 4A:3-4.21.

## **ORDER**

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.